

file

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

SEATTLE SHORELINE COALITION,

Appellant,

v.

CITY OF SEATTLE, PAUL BLAUERT
and CHARLES VIELE,

Respondents.

SHB No. 87-30

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, a request for review of the approval by the City of Seattle of a substantial development, involving floating homes, moorage and office/retail use on the North Shore of Lake Union, came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk, (presiding), Wick Dufford, Judith A. Bendor, Nancy R. Burnett, Richard Gidley and William Derry, convened in Seattle, Washington on November 19, 1987.

Appellant, Seattle Shoreline Coalition was represented by Peter T. Jenkins, Attorney at Law. The City of Seattle was represented by Judith B. Barbour, Assistant City Attorney. Respondents Blauert and

1 Viele were represented by Roger E. Rahlfs, Attorney at Law. The
2 proceedings were reported by Rebecca Winters and Lettie Hylarides, of
3 Evergreen Court Reporting.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 examined. Argument was heard. Now, all members having reviewed the
6 entire record, the Board makes these

7 FINDINGS OF FACT

8 I

9 Houseboats historically have been an important component of the
10 mixed use environment of Seattle's Lake Union. In recent times the
11 opportunities for the placement of new houseboats (also referred to as
12 floating homes) on the lake have been severely limited. This case
13 involves a proposal to install a few new houseboats on the north shore
14 of the lake. Opposition to the proposal focuses primarily on lot
15 coverage concerns.

16 II

17 The site of the proposed development is 933 North Northlake Way,
18 long known as Lee's Moorage. The property is about 91 feet wide and
19 contains approximately 2,220 square feet of dry land area on the north
20 end. The dry land portion of the parcel slopes steeply down to the
21 lake. From the ordinary high water mark south to the harbor line or
22 pierhead line, the parcel encompasses about 27,846 square feet of
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1 submerged area. An additional 13,842 square feet of submerged area
2 between the harbor line and what is known as the construction limit
3 line, is leased from the State Department of Natural Resources (DNR).

4 III

5 At present the site contains ten venerable floating homes, all
6 predating both the Shoreline Management Act and the adoption of the
7 Seattle Shoreline Master Program (SSMP). Nine of these houseboats are
8 moored to the east side of the central walkway. The tenth is now
9 located near the waterward end of the walkway's west side. Further
10 shoreward along this west side are 20 boat slips; nearest to shore are
11 the remains of what was once a dry dock and haul-out facility. The
12 DNR lease area is presently undeveloped.

13 Much of the property in its current state can fairly be described
14 as blighted. The walkway is dilapidated. The dry dock is falling
15 apart and unusable.

16 IV

17 The lakefront neighborhood around Lee's Moorage is devoted to
18 commercial and industrial uses related to or dependent upon the
19 water. Immediately on either side of the property are marine sales
20 offices.

Respondents Blauert and Viele purchased Lee's Moorage in 1984 and, thereafter, generated plans to rehabilitate the property. Their proposal was presented to the City of Seattle in an application for a shorelines substantial development permit. After some evolution in the permitting process, the following project was approved by the City.

The dry dock is to be demolished. A building will be constructed on the dry land portion of the lot to house a marine sales office at street level with eight parking spaces underneath. The plans call for three of these parking spaces to be over water. A new ramp and walkway will replace the present access to the floating homes. This walkway will be extended over the DNR lease area and slips will be added to provide new uncovered moorage for 15 boats related to the marine sales office.

The existing 20 boat slips on the west side of the walkway will be eliminated. From the harbor line to the shore, the west side will be converted to floating home sites. Six such sites will be created. The one existing houseboat on the west side will be moved to the most landward of the new floating home sites. The other five sites will be used for new houseboats.

1 VI

2 The project site from the north boundary out to the harbor or
3 pierhead line is within the Urban Stable/Lake Union (US/LU)
4 environment under the SMMP. The DNR lease area is in the Conservancy
5 Management (CM) environment. Floating homes are permitted in the
6 US/LU environment, but not in the CM environment. However, boat
7 moorage, as contemplated here, is a permitted use in the CM
8 environment SSMP Sections 24.60.535(A)(2); 24,60,650(B).

9 VII

10 The SSMP in Section 26.60.535(B), establishes bulk or lot coverage
11 standards for new floating homes. The maximum water coverage allowed
12 for a new floating home is 1200 square feet. The minimum floating
13 home site area for an individual floating home is 2000 square feet.
14 The term "floating home site" is defined to mean "that part of a
15 floating home moorage located over water designated to accommodate one
16 floating home." SSMP Section 24.60.070.

17 Here all six of the designated site areas on the west side of the
18 walkway are large enough to exceed the minimum site area of 2000
19 square feet. In addition all of the house boats proposed for these
20 sites will cover 1200 square feet of water or less. The one existing
21 houseboat on the west side, when moved to its new site, will be
22 treated as though it were a new house boat.

VIII

A couple of old houseboats on the east side of the walkway exceed the size restrictions for new houseboats. All nine are placed on "floating home sites" of substandard size. These departures from current requirements are countenanced because the construction and placement of these houseboats preceded today's regulations. Under SSMP Section 26.60.315, they are allowed to continue as nonconforming uses.

IX

On the basis of the application documents submitted to it, the City of Seattle derived square footage figures for the property and for various component parts thereof. We were not persuaded by appellants that the square footage figures presented to us by the City were substantially inaccurate. We have, therefore, relied on the City's figures.

X

The SSMP section dealing with the placement of new floating homes, Section 26.60.535(B), contains the following subsection:

4. Total water coverage of all floating homes and all moorage walkways (fixed or floating) shall not exceed forty-five percent of the submerged portion of the moorage lot area.

The interpretation of this subsection is the crux of this case.

1 Appellants argue that the square footage covered by the access
2 walkway and all the floating homes which will end up on the site --
3 both old and new -- should be divided by the total submerged area to
4 determine whether the 45% figure is exceeded.

5 The City contends that the water coverage percentage is to be
6 derived by focusing on the new floating homes only and comparing the
7 total square footage of these new homes with the total square footage
8 of all the "floating home sites" in which these new homes will be
9 placed.

10 Neither appellants nor the City include the submerged area covered
11 by the DNR lease in their calculations on this question.

12 The relevant square footage figures supplied by the City are as

13 follows: a) Existing floating homes -- 9,406 square feet

14 b) New floating homes -- 5,690 square feet

15 c) Access walkway -- 1,480 square feet

16 d) Total submerged area (excluding DNR lease) -- 27,846
17 square feet

18 e) Total of new floating home sites -- 14,211 square feet

19 Using these figures, appellants approach produces a water coverage
20 figure of nearly 60%. The City's approach, however, yields a water
21 coverage figure of approximately 40%.

1 As noted, the walkway serving the old houseboats (which will also
2 serve the new houseboats) is to be replaced. If one-half of this
3 replacement structure is allocated to the new houseboat water coverage
4 calculations, the result is coverage of about 45% under the City's
5 approach.

6 XI

7 The question of how to apply the 45% water coverage limitation for
8 new floating homes in a situation where old, nonconforming houseboats
9 occupy part of a parcel is one of first impression for the City. The
10 situation apparently was not directly anticipated when the SSMP was
11 drafted. The City has never had to face the issue before, and does
12 not anticipate future applications presenting the question. There is
13 no established City policy dealing with the matter.

14 XII

15 The SSMP also includes a coverage limit for all development on a
16 parcel in relation to total lot size. SSMP, Table 1 (C)(7)
17 establishes this lot coverage percentage along the north shore of Lake
18 Union as 50% for waterfront lots.

19 The relevant square footage figures supplied by the City in
20 relation to this standard are:

- 21 a) Total development -- 22,075 square feet
- 22 b) Total lot area -- 43,888 square feet

23 Both of these figures include the DNR lease area, for the obvious
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1 reason that part of the development is to occur in that area. The
2 total development number includes both the old and the new
3 houseboats. The percentage for overall development, using the above
4 figures, is approximately 50%.

5 Appellants argue that the overall development should also include
6 the space occupied by boats in the new moorage slips. Using
7 appellant's figure this would add 6672 square feet to the total
8 development figure. The result of this addition to the development
9 total would bring overall lot coverage to around 65%.

10 XIII

11 The Blauert and Viele application was received by the City on
12 March 3, 1986. On July 2, 1987, the City of Seattle approved the
13 application. On July 29, 1987, the Seattle Shorelines Coalition filed
14 its appeal with this Board. On October 9, 1987, the appeal was
15 certified by the Department of Ecology and the Attorney General's
16 Office.

17 XIV

18 Any Conclusion of Law which is deemed a Finding of Fact is hereby
19 adopted as such.

20 From these Findings of Fact the Board comes to these
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1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these parties and these issues.
4 RCW 90.58.180. Appellant, having requested review, bears the burden
5 of proof in this proceeding. RCW 90.58.140(7).

6 II

7 Appellants assert that the proposed development will violate two
8 bulk restrictions of the SSMP. They argue that water coverage will
9 exceed 45% of submerged area, in violation of Section
10 26.60.535(B)(4). They also argue that total lot coverage will exceed
11 50% in violation of Table 1(C)(7).

12 The resolution of these questions involves a matter of
13 interpretation of the SSMP. We believe the City has correctly
14 interpreted its own Master Program on the area coverage questions
15 involved. Thus, we conclude that the mathematical results of the
16 City's calculations demonstrate that the proposal at issue is
17 consistent with both SSMP Section 24.60.535(B)(4) and Table 1(C)(7).

18 III

19 Turning first to the coverage by overall development in relation
20 to total lot area, we note that the term "lot coverage" is defined at
21 Section 24.60.100 as follows:

22 "Lot coverage" means that portion of a lot occupied
23 by the principal building and its accessory
24 buildings including piers and floats, expressed as
25 a percentage of the total lot area.

1 There is no suggestion in this definition, or elsewhere, that boats
2 occupying open-air slips are to be included in the calculation of
3 coverage. We conclude, that the space occupied by boats in slips was
4 not intended to be included in the 50% coverage limit set out in Table
5 1(C)(7).
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7 IV

8 When the parked boats are not included, the 50% coverage limit is
9 met after summing the square footage of all the structures on the
10 parcel, both the pre-SSMP development and the proposed new project.
11 Built into the total coverage limit, then, is a restriction on new
12 development to whatever lot coverage is available after old
13 development is taken into account. On a lot wide coverage basis
14 conformity with overall bulk limitation objectives is maintained, even
15 though non-conformity may exist as to prior structures in matters
16 internal to the lot.

17 V

18 Given the function of the 50% coverage limit in preventing new
19 development from contributing to overall bulk non-conformity, we have
20 no difficulty in accepting the City's interpretation limiting the
21 water coverage restrictions to the area for new floating homes. In so
22 concluding we are mindful of the importance of local planning and
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1 permitting in cases involving urban waterfronts where restoration of
2 an already developed area is the focus. See Sato Corporation v. City
3 of Olympia and Department of Ecology, SHB No. 81-41 (1982).

4 In this case the City's interpretation is the filling of a gap in
5 its regulatory scheme, not explicitly addressed in the master
6 program. The City had no precedent to guide it and no established
7 policy on the matter.

8 Appellant has not identified, any policy of the Shoreline
9 Management Act or of the SSMP which the City's approach violates. The
10 decision on this point is not an example of uncoordinated and
11 piecemeal development, but rather the product of the very rational
12 planning effort established by the Act. See Knapp v. Kitsap County
13 and Hammer, SHB Nos. 85-17/18 (1986). Moreover, in the instant case,
14 the effect of the City's approval is to further an explicit purpose of
15 the US/LU environment, as set forth in the SSMP. Section 24.60.350(E)
16 identifies the elimination of "physical and visual blight from areas
17 surrounding Lake Union and Portage Bay" as one of the program's goals.

18 VI

19 The internal logic of the text of Section 24.60.535 supports the
20 City's approach. Part (B) where the 45% figure occurs is specifically
21 addressed to new floating homes. There is no intertie between Part
22 (C) which concerns old, nonconforming floating homes and Part (B).

1 Further, the subsections of Part (B) must be read together.

2 Subsections (2) and (3) deal, respectively, with maximum floating home
3 size and the minimum site area for each houseboat. The maximum
4 houseboat size (1200 square feet) is greater than 45% of the minimum
5 floating home site area (2000 square feet). In context, therefore,
6 the 45% total water coverage limit can logically be seen as a coverage
7 ceiling for the total of site areas allocated to new floating homes,
8 within which a certain variability can be allowed on a lot by lot
9 basis.

10 Accordingly, we conclude that the City correctly applied the water
11 coverage restriction of Section 24.60.535(B). Under the facts, the
12 proposed development is consistent with the 45% limit there imposed.
13 We agree with the City that the replacement walkway is analytically to
14 be included in the pre-existing development and, therefore, needn't be
15 included in the water coverage percentage for new floating homes .

16 VII

17 Appellants failed to bring forward evidence sufficient to show
18 that the project will violate any other SSMP sections concerning which
19 issues were raised.
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VIII

Some mention was made of the possibility that the nine existing houseboats may encroach upon property to the east and south. We are not empowered to adjudicate property boundary issues and do not do so here. See Plimpton v. King County, SHB Nos. 84-23/24/25 (1985). Our decision is limited to the issues raised by the proposed new development at Lee's Moorage. If at some future time encroachment of the old development requires the rearrangement or realignment of structures at Lee's Moorage, this will have to be addressed in a separate application which presents the proposed change.

IX

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enter this

ORDER

The decision of the City of Seattle to grant an application for a shoreline substantial development permit to respondents Blauert and Viele is affirmed.

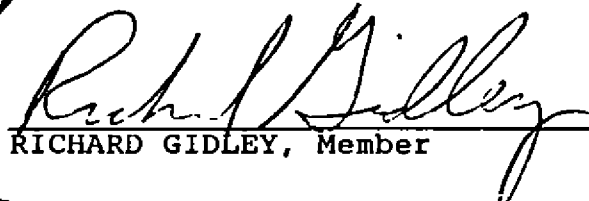
DONE at Lacey, Washington, this 7th day of April, 1988.


SHORELINES HEARINGS BOARD

 4/6/88
LAWRENCE J. FAULK, Presiding


WICK DUFFORD, Member


JUDITH A. BENDOR, Member


RICHARD GIDLEY, Member


NANCY R. BURNETT, Member


WILLIAM DERRY, Member